IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE; TEACH ONE OF AMERICA, INC.,	)	
PLAINTIFFS,	)	
v.	)	**CIVIL ACTION NO.: 3:06-cv-224-WKW**
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
DEFENDANT.	)	

DEFENDANT SHERIFF WARREN'S
MOTION TO DISMISS

COMES NOW, Defendant Sheriff David Warren ("Sheriff Warren"), who has been sued in his official capacity as Sheriff of Macon County, Alabama, and respectfully moves this Court to dismiss all claims against him for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. Pro. 12(b)(6). In support of this motion, Sheriff Warren states the following:

1. Plaintiffs Reach One, Teach One ("Reach One") and Macon County Investments, Inc. ("MCI") filed their Complaint on March 9, 2005 seeking injunctive relief and a declaratory judgment.

2. Plaintiffs' Complaint asserts a single claim against Sheriff Warren; violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. (Comp. at ¶ 1, 19.)

3. Plaintiffs have phrased their allegations and the relief they seek in such a way that it appears that both Reach One and MCI applied for a Class B Bingo License and that they would both be entitled to a Class B Bingo License if they prevail. However, this is a misnomer. Amendment No. 744, and the Macon County Bingo Rules, only provide for the licensing of a nonprofit organization for the conduct of bingo. Amendment No. 744 does permit a nonprofit organization to contract with another entity to operate the games and the facility. However, only Plaintiff Reach One applied and could possibly be eligible to obtain a Class B Bingo License (assuming that Plaintiff Reach One met the qualifications). The 2005 Amendments do provide for a Class B Bingo Operator's License, but Plaintiff MCI does not allege that it has applied for such a license or that it would meet the qualifications for the issuance of such a license.

4. As demonstrated in the Brief in Support of Motion to Dismiss filed contemporaneously herewith, Plaintiffs' Complaint is due to be dismissed in its entirety on several grounds.

5. First, Plaintiffs' Complaint is due to be dismissed for lack of subject matter jurisdiction because: (1) the Plaintiffs' claim is not yet ripe, and (2) the case is moot.

6. Article III of the Constitution limits the jurisdiction of federal courts to the consideration of "Cases" or "Controversies." U.S. Const. art. III, § 2. The "case or controversy" requirement imposes justiciability limitations on federal courts. The ripeness inquiry is a component of justiciability and goes to the subject matter jurisdiction of the federal court. *See Johnson v. Sikes*, 730 F.2d 644, 647 (11th Cir. 1984) ("The question of ripeness affects our subject matter jurisdiction . . . ."). The purpose of the ripeness doctrine is to prevent the federal courts from exceeding their constitutional role by becoming embroiled in

hypothetical, abstract disputes and by needlessly interfering in the workings of other branches of government. *See id.* at 648. *See also National Advertising Co. v. City of Miami,* 402 F.3d 1335, 1339 (11th Cir. 2005); *Atlanta Gas Light Co. v. Federal Energy Regulatory Comm'n*, 140 F.3d 1392 (11th Cir. 1998); *Digital Props, Inc. v. City of Plantation*, 121 F.3d 586 (11th Cir. 1997).

7. Based upon this standard, it is clear from Plaintiffs' Complaint that its claim is not ripe for adjudication. Plaintiff Reach One, Teach One ("Reach One") submitted an application to the Sheriff of Macon County for a Class B Bingo License to conduct bingo at a location to be operated by Plaintiff Macon County Investments, Inc. ("MCI"). As part of its application, Plaintiff Reach One sought approval for MCI to be considered a "qualified location" as that term is defined in the Rules and Regulations for the Conduct of Bingo in Macon County, Alabama[1]. Inasmuch as Plaintiff Reach One's application is incomplete, the Sheriff of Macon County has neither approved nor denied the application. Therefore, Plaintiffs' claim is not ripe for adjudication and no claim or controversy is presented in this case.

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[1]However, Plaintiff MCI admits in its Complaint that it has not completed construction of a facility (Comp. at ¶ 17.)

8. In addition, district courts lack the power to decide a case on the grounds of mootness if a decision cannot affect the rights of the litigants in the case. *Rice,* 404 U.S. at 246, 92 S.Ct. at 404; *see also Powell v. McCormack,* 395 U.S. 486, 496, 89 S.Ct. 1944, 1951, 23 L.Ed.2d 491 (1969) ("[A] case is moot when . . . the parties lack a legally cognizable interest in the outcome."). In the instant case, Plaintiffs request this Court to: (1) invalidate certain provisions of the First Amended and Restated Rules and Regulations for the Conduct of Bingo in Macon County, Alabama ("2004 Amendments") and the Second Amended and Restated Rules and Regulations for the Conduct of Bingo in Macon County, Alabama ("2005 Amendments"), and (2) compel the Sheriff to issue Plaintiff Reach One a Class B Bingo License pursuant to the that were in effect prior to the adoption of the 2004 and 2005 Amendments. However, Plaintiffs are not entitled to the relief they seek because Plaintiff Reach One's application is incomplete.[2] Therefore, even if this Court compelled the Sheriff to issue a Class B Bingo License to Plaintiff Reach One under the original version of the Bingo Rules, Plaintiff Reach One fails to satisfy even those requirements.

9. Second, Plaintiffs' Complaint is due to be dismissed pursuant to Fed. R. Civ. Pro. 12(b)(6) because it fails to state a claim upon which relief can be granted. Sheriff Warren acknowledges that courts are reluctant to grant motions to dismiss and the Plaintiffs' burden for surviving a motion to dismiss is exceedingly low. *Kuhn v. Thompson*, 304 F.Supp, 2d 1313 (M.D. Ala. 2004). However, Plaintiffs' Complaint cannot meet this "exceedingly low" standard

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[2]In addition, as explained in paragraph 3 above, Plaintiff MCI is not eligible to obtain a Class B Bingo License under any version of the Bingo Rules because it is not a nonprofit, charitable organization.

because their Complaint fails to state a claim for violation of the Equal Protection Clause upon which relief can be granted. Specifically, Plaintiffs' Complaint fails to demonstrate that the Second Amended and Restated Rules and Regulations for the Conduct of Bingo in Macon County, Alabama are not rationally related to a legitimate government interest and they fail to demonstrate that Sheriff Warren's actions were triggered by a discriminatory motive or purpose. *Snowden v. Hughes*, 321 U.S. 1, 8 (1944); *Kuhn,* 304 F.Supp, 2d at 1332; *Arrington v. Dickerson*, 915 F.Supp. 1503, 1509 (M.D. Ala. 1995).

WHEREFORE, the premises considered, Defendant Sheriff Warren moves this Honorable Court to dismiss the Complaint in its entirety.

Dated this 3rd day of April, 2006.

Respectfully submitted,

/s/ Fred D. Gray
Fred D. Gray (GRA022)

/s/ Fred D. Gray, Jr.
Fred D. Gray, Jr. (GRA044)

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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/s/Fred D. Gray, Jr.
OF COUNSEL